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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 5/2022**

PERNOD RICARD INDIA PVT.LTD.Plaintiff

Through: Mr. Ankit Virmani, Ms.
Ruchika Agarwala and
Ms. Malvikka Arya, Advs.

versus

RAJ KUMAR & ANR.Defendants

Through: Mr. Deepak Jain, Ms.
Anoushka Singh, Ms.
Dashampreet Kaur, Ms.
Twinkle Gupta and Mr.
Sajal Gupta, Advs. for D-2

CORAM:

**JOINT REGISTRAR (JUDICIAL) MS. SHUCHI
LALER (DHJS)**

ORDER

30.07.2024

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1. As per office note, nothing fresh filed. The right of defendant nos. 1 & 2 to file written statements was closed on 14.10.2022 and 03.08.2023 respectively.
2. The question which requires adjudication in the instant matter is 'Whether affidavit of admission/denial of defendant no.2 can be taken on record when the same is not filed within 120 days and the right to file written statement already stands closed vide order dated 03.08.2023'.
3. Learned counsel for defendant no.2 urges that the affidavit of admission/denial can be taken on record in the light of judgment of "**Khadi and Village Industries Commission Vs. Roopika Rastogi and Anr. 2023 SCC Online Del 1301**" where in para no.24 and 25, the Hon'ble Court has observed as under:-

24. Where a defendant does not



seek to file a written statement, its right to file an affidavit of admission and denial of the documents filed by the plaintiff cannot be ipso facto foreclosed, no such provision envisaging such foreclosure existed either in the CPC as amended by the Commercial Courts Act or in the Original Side Rules. Even otherwise, it is open to a party not to file a written statement contesting the allegations in the plaint and nonetheless seek to admit or deny the documents filed with the plaint. It is for a party to decide as to whether it desires, on affidavit, by way of written statement, to contest the assertions in a plaint. The abandonment of the right to file a written statement does not, therefore, ipso facto result in abandonment of the right to file an affidavit of admission and denial.

25. The reliance, by Ms. Majumdar, on Rules 3, 4 and 7 of Chapter VII of the Original Side Rules cannot, in my view, foreclose the right of the defendant to file an affidavit of admission and denial, for the simple reason that the said Rules apply subject to the initial requirement of summons having been issued to the defendant for appearance and for filing written statement. That having not been done till date, it would not be possible for this Court to deny, to the defendant, the right to file an affidavit of admission and denial of the documents filed by the plaintiff.



4. Learned counsel for plaintiff strongly opposes the affidavit of admission/denial of defendant no.2 being taken on record and places reliance on para nos. 16, 21 to 23 of the judgment titled as **“Mayank Gupta Vs. Aditya Birla Fashion and Retail Limited” 2023 SCC Online Del 1485** which read as under:-

16. However, as admitted, the affidavit of admission/denial of documents of the plaintiff was not accompanying the written statement. It is clear from the reading of Order XI Rule 1 of Commercial Courts Act, 2015 and the provisions contained therein that the timelines prescribed by the amended provisions of Civil Procedure Code, 1908 as well as the Commercial Courts Act, 2015 are strict and mandatory and there is no question of any leverage which can be afforded to any party which defaulted thereof.

21. This Court has perused the impugned order whereby the learned Trial Court has based its reasoning on the judgments passed by the Coordinate Bench of this Court in Okay Play and Unilin Beheer B.V. (Supra) whereby the same provisions were tested and also held that the provisions are mandatory and not having filed the affidavit of admission/denial alongwith the written statement, the affidavit as well as the written statement was not taken on record nor considered for any purposes.

22. The said judgment also considered the aspect, if the affidavit of admission/denial would have been filed within the stipulated period of 120 days' period from the date of service of summons, the delay in filing affidavit of admission/denial, before the expiry of 120 days could be condoned and the affidavit of admission/denial could be



taken on 23.07.2024.

23. No such condonation arises in the present case.

5. Learned counsels for plaintiff and defendant no.2 request that the matter be listed before the Hon'ble Court for consideration of the aforesaid aspect. At their request, the file may be placed before the Hon'ble Court on date already fixed i.e. 01.08.2024, for further directions.

**SHUCHI LALER (DHJS),
JOINT REGISTRAR (JUDICIAL)**

JULY 30, 2024/cd

[Click here to check corrigendum, if any](#)